

I.

Garcia is a civil detainee being held at the Federal Correctional Institution - Medium I in Butner, North Carolina. Pet. 7. According to Garcia, his projected release date was June 12, 2008. Id. On June 10, 2008, Garcia states that he was certified as a “sexually dangerous person” under the Adam Walsh Act’s civil-commitment process, 18 U.S.C. § 4248. Id. Garcia asserts that he is being detained unlawfully. Id. at 8–10.

On June 8, 2010, Garcia filed a motion to appoint counsel under 18 U.S.C. § 3006A (“section 3006A”) [D.E. 14]. Section 3006A allows the court discretion to appoint representation for a financially eligible person who seeks relief under 28 U.S.C. § 2241. See 18 U.S.C. § 3006A(a)(2)(B). Garcia states his grounds for relief adequately and has responded timely and proficiently to the court’s orders. See Pet.; Petr.’s Mem. Opp’n Mot. Dismiss. The interests of justice do not require the appointment of counsel at this time. See 18 U.S.C. § 3006A(a)(2)(B). Therefore, the court denies petitioner’s motion to appoint counsel [D.E. 14].

On December 9, 2009, respondent filed a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure [D.E. 7]. In the alternative, respondent asks the court to consolidate this action with United States v. Garcia, No. 5:08-HC-2086-BR (E.D.N.C. filed June 10, 2008). See Fed. R. Civ. P. 42(a). Respondent also seeks to stay petitioner’s immediate release. Mem. Supp. Mot. Dismiss 2–3.

On September 7, 2007, the district court declared the Adam Walsh Act unconstitutional. See United States v. Comstock, 507 F. Supp.2d 522, 540 (E.D.N.C. 2007) (“Comstock”).¹ The Fourth

¹Pending appeal, the court stayed the release of respondents civilly committed under section 4248. United States v. Comstock, No. 5:06-HC-2195-BR (E.D.N.C. Nov. 26, 2007) (unpublished). On June 14, 2010, the court lifted any stay or abeyance “to allow respondents to either proceed with additional constitutional challenges, or evidentiary hearings as they see fit.” United States v. Garcia, No. 5:08-HC-2086-BR, slip op. at 4 (E.D.N.C. June 14, 2010) (unpublished).

Circuit affirmed. United States v. Comstock, 551 F.3d 274 (4th Cir. 2009). On May 17, 2010, the Supreme Court reversed and remanded the action to the Fourth Circuit. See United States v. Comstock, 130 S. Ct. 1949 (2010). The Supreme Court did not resolve whether section 4248 violates Comstock's equal protection, due process, or other rights under the Constitution. Id. at 1965.

On June 8, 2010, the Fourth Circuit granted the parties' request for an expedited review and established a briefing schedule to address the issues left open by the Supreme Court. See United States v. Comstock, No. 07-7671 (4th Cir. June 8, 2010) (unpublished). The Fourth Circuit has scheduled oral argument for September 21, 2010.

In another action, the district court granted a section 2241 petition for a writ of habeas corpus to a petitioner detained under 18 U.S.C. § 4248 for reasons yet to be adjudicated on appeal in Comstock. See Timms v. Johns, No. 5:08-HC-2160-BO, 2010 WL 1252394, at *1–5 (E.D.N.C. Mar. 31, 2010), appeal docketed, No. 10-6496 (4th Cir. Apr. 5, 2010). The Fourth Circuit granted appellant's motion to stay pending appeal. See Timms v. Johns, No. 10-6496 (4th Cir. Apr. 6, 2010) (unpublished). The Fourth Circuit has scheduled oral argument for September 21, 2010.

In light of Comstock and Timms, the court denies without prejudice respondent's motion to dismiss [D.E. 7]. The court holds this action in abeyance and grants respondent's request to stay petitioner's release pending resolution of Comstock and Timms or further order of this court.

Federal Rule of Civil Procedure 42(a) provides: "If actions before the court involve a common question of law or fact, the court may . . . consolidate the actions." Fed. R. Civ. P. 42(a)(2). The district court enjoys "broad discretion under [Federal Rule of Civil Procedure] 42(a) to consolidate causes pending in the same district." A/S J. Ludwig Mowinckles Rederi v. Tidewater Constr. Corp., 559 F.2d 928, 933 (4th Cir. 1977). The court has reviewed Garcia's actions and

denies respondent's request to consolidate [D.E. 7].

II.

As explained above, the court DENIES petitioner's motion to appoint counsel [D.E. 14]. The court DENIES without prejudice respondent's motion to dismiss [D.E. 7]. The court DENIES respondent's motion to consolidate [D.E. 7]. The court HOLDS this action in abeyance and GRANTS respondent's request to stay petitioner's release pending resolution of Comstock and Timms or further order of this court.

SO ORDERED. This 5 day of August 2010.


JAMES C. DEVER III
United States District Judge